

WEDNESDAY, DECEMBER 19, 2001

The Board met at the Holiday Inn, Capitol Plaza, 300 J Street, California Room, Sacramento, at 9:30 a.m. with Chairman Parrish, Vice Chairman Chiang and Mr. Klehs present, and Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

2001 BOARD/ASSESSORS' MEETING

Mr. Parrish opened the annual meeting of the Board and county assessors required under section 15607 of the Government Code to discuss administrative issues related to assessment and taxation laws and to promote uniformity and tax procedural matters throughout the state. Mr. Parrish welcomed the county assessors to the meeting.

OPENING REMARKS

Mr. Chiang expressed happy holidays to everyone. He stated that it has been a delight working with the county assessors during the year of 2001.

Mr. Klehs welcomed the county assessors to Sacramento. He commented that next year he would like to renew the tradition and have the county assessors and the Board meet at the annual assessors' conference. Mr. Klehs acknowledged that everyone is concerned about the state's financial condition. He stated that he is looking forward to working in partnership with the county assessors now and in the future.

Ms. Mandel stated that it was nice to see everyone and that Dr. Connell and she looked forward to working with the county assessors in the coming year.

John Winner, El Dorado County Assessor and President of the California Assessors' Association, applauded the motion to renew the Board/County Assessors' meeting at a joint conference. Mr. Winner stated that he enjoyed serving as President and wished everyone a prosperous new year.

Larry Stone, Santa Clara County Assessor and incoming President of the California Assessors' Association, discussed the attitude and demeanor of the Board Members during the Board Meetings. He expressed concern about the time limits set for public speakers and some public speakers not being allowed to speak. He stated that the assessors are fed up with the treatment of signing up to speak and not being able to. Mr. Stone stated that the Board Members should treat all speakers fairly and with respect, it's good politics and the decent thing to do.

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STATE FISCAL SITUATION

Marianne O'Malley, Principal Fiscal and Policy Analyst, Legislative Analyst's Office, provided a presentation regarding the California economic and budget outlook. Ms. O'Malley explained how the Legislative Analyst's Office calculated the projection of the \$4.5 billion deficit in the current calendar year; a shortfall of \$12.4 billion in the current budget year; as well as, budget shortfalls persisting beyond 2002-03 absent corrective action.

LEGISLATIVE UPDATE

Margaret Shedd, Legislative Counsel, Legislative Division, offered a brief overview of legislation that was enacted in the 2001 Legislative Session. Ms. Shedd discussed the Legislative Bulletin which listed all the bills that were enacted during the year.

Rose Marie Kinnee, Legislative Analyst, discussed the bills and what the Board would be proposing for legislation in 2002.

WILLIAMSON ACT ISSUES

Patricia Gatz, Associate Environmental Planner, Department of Conservation, provided a brief overview of the Williamson Act Program. The Williamson Act Program is a program that encourages the preservation of agricultural farmland through contracts providing landowners with reduced property tax values.

TAXPAYERS' RIGHTS ADVOCATE

Jennifer Willis, Chief, Taxpayers' Rights and Equal Employment Opportunity Division, stated that the Taxpayers' Rights Advocate Office was established in 1994 and that their goal is to ensure that taxpayers receive fair and uniform treatment under the property taxation laws. Ms. Willis reported on the Taxpayers' Bill of Rights Annual Report. She stated that we need to insure that all taxpayers are informed of the law so they would be better able to comply. The Taxpayers' Rights Advocate Office works with the Property Taxes Department, County Assessors' offices, etc., to develop strategies for better compliance. Ms. Willis encouraged the county assessors to participate in the customer services program survey.

Bob Reinhard, Technical Advisor, discussed the issues and cases that come to their office. Mr. Reinhard stated that most taxpayers are referred through

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telephone calls and referrals from the assessors' offices. He also discussed taxpayer awareness of claims for exclusions of property transfers. Close to 1,000 cases per year are referred to the Taxpayers' Rights and Equal Employment Opportunity Division and approximately 150 cases are property tax related.

PROPERTY TAX COMMITTEE WORKPLAN FOR 2002

Ms. Mandel discussed proposed issues for the upcoming year for the Property Tax Committee: 1) Assessors Handbook updates for Sections 267, 501 and 504; 2) handbook revisions on vessels and possessory interest; 3) the new rule regarding certification of appraisers; 4) assessment appeals issues; 5) decisions relating to section 515 properties; 6) disaster relief – Ms. Mandel stated that presently nothing was planned on the agenda; 7) life estates; and, 8) oil refineries.

The Board recessed at 11:30 a.m. and reconvened at its offices at 450 N Street, Sacramento, at 2:15 p.m. with Chairman Parrish, Vice Chairman Chiang, Mr. Klehs and Mr. Andal present, and Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

PUBLIC HEARINGS

TIMBER YIELD TAX RATE

David Gau, Deputy Director, Property Taxes Department, made introductory remarks regarding the Timber Yield Tax Rate.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted the 2002 Timber Yield Tax Rate as recommended by staff (Exhibit 12.1).

Exhibits to these minutes are incorporated by reference.

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TIMBER HARVEST VALUES

David Hayes, Manager, Research and Statistics Section, made introductory remarks regarding 2002 Timber Harvest Values.

Speakers: Lennart Lindstrand, Jr., Manager, Land Development Department,
W. M. Beaty & Associates, Inc.
Roy H. Richards, Jr., Timber Advisory Committee, Member

Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel voting no, the Board adopted a 2002 Timber Harvest Values as recommended by staff, modifying the values for green white fir (Exhibit 12.2).

PROPOSED AMENDMENTS TO REGULATION 6001, GENERAL PROVISION

Jean Ogrod, Assistant Chief Counsel, Settlement and Administration Section, Legal Division, reported there are no proposed changes to the Conflict of Interest Code. The proposed changes to Appendix A reflect the organization and classification changes made at the Board since the Conflict of Interest Code was last amended. The proposed changes to Appendix B reflect the changes to the tax and fee programs administered by the Board.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board adopted the amendment to Regulation 6001 as published (Exhibit 12.3).

The Board recessed at 2:30 p.m. and reconvened at 2:40 p.m. with Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal present.

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**PROPERTY TAXES HEARINGS—PETITIONS FOR REASSESSMENT OF
UNITARY VALUE**

GST Telecommunications of California (2097), SAU01-041, 132046

2001, \$271,400,000.00 Unitary Value

GST Pacific Lightwave (2000), SAU01-042, 132047

2001, \$67,700,000.00 Unitary Value

GST Call America, Inc. (2022), SAU01-043; 132048

2001, \$771,000.00 Unitary Value

GST Net, Inc. (7641), SAU01-044, 132049

2001, \$176,000.00 Unitary Value

For Petitioner:

Peter W. Hladek, Sr. Manager

For Property Taxes Department:

Mary Ann Alonzo, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether or not the price that Time Warner Telecom paid for the GST assets should be the basis for the value on lien date 2001.

Whether or not certain fiber optic cable and conduit was reported by a GST company and also was reported by another state-assessed company, 360 Networks, Inc., resulting in a potential double assessment of the property.

Whether the penalty imposed on GST Net, Inc., under Revenue and Taxation Code section 830 for failing to file its property statement in a timely manner should be abated.

Petitioner's Exhibit: Declaration (Exhibit 12.4)

Franchise Tax Board Exhibit: Appeal Synopsis (Exhibit 12.5)

Larry Augusta, Assistant Chief Counsel, Property Taxes Section, Legal Division, stated for the record that issue 2 had been resolved.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board ordered that the failure to file penalty be abated.

Mr. Andal moved to reduce the adopted value. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Andal voting yes, Mr. Chiang and Mr. Klehs voting no, Ms. Mandel not participating in accordance with Government Code Section 7.9.

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Rhythms Links, Inc. (7718), SAU01-031; 131272

2001, \$40,400,000.00 Unitary Value

For Petitioner:

Daniel J. Klug, Tax Manager

For Property Taxes Department:

Robert Lambert, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether or not the petitioner has met its burden of proof and established that it has lost 83 percent of the fair market value of its property—as measured by replacement cost—through atypical or extraordinary economic obsolescence.

Whether or not the petitioner has established that any double taxation occurred.

Petitioner's Exhibit:

Letter w/attachments (Exhibit 12.6)

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board approved the revised staff recommendation.

Seren Innovations, Inc. (7832), SAU 01-028; 131268

2001, \$112,200,000.00 Unitary Value

\$ 11,220,000.00 Penalty, Late Filing

For Petitioner:

Daniel J. Klug, Tax Manager

For Property Taxes Department:

Robert Lambert, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the Board's sole reliance on Replacement Cost Less Depreciation (Repl CLD) in valuing Petitioner's property captures functional and economic obsolescence.

Whether Board staff used trending factors greater than one when calculating the Repl CLD value indicator.

Whether Petitioner should be relieved from the 10 percent penalty for late filing of its property statement.

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board ordered that penalty for late filing be abated.

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Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board ordered that the petition be denied.

All American Pipeline L.P. (465), SAU 01-024; 130880

2001, \$96,600,000.00 Unitary Value

For Petitioner:

Peter Michaels, Attorney

Thomas Gillbert, Assistant Treasurer

For Property Taxes Department:

Ken McManigal, Counsel

Ken Thompson, Sr. Specialist Property

Auditor Appraiser

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether new information and materials relevant to value offered by Petitioner's representatives after the deadlines for submitting anything further should be accepted as evidence at the Board Hearing and/or relied upon by the Board at such hearing.

Whether the Board-adopted 2001 unitary property value for Petitioner's property must be reduced under statutes and rules governing the assessment of utility property.

Whether the Board-adopted 2001 unitary property value for Petitioner's property is excessive, and whether taxes attributable to the Board's assessment and payable by Petitioner are illegal and erroneous.

Whether information submitted by Petitioner's representatives established a remaining operating life for its property of 5 years.

Whether the sources for crude oil production projections relied upon by Board staff are reliable.

Whether Board staff should have relied upon the Repro CLD value indicator.

Staff Exhibit: 15-Year Life (Exhibit 12.7)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang and Mr. Andal voting yes, Mr. Klehs abstaining, Ms. Mandel not participating in accordance with Government Code Section 7.9, the Board ordered documents submitted by the petitioner be sealed.

Mr. Andal moved to deny the petition. The motion was seconded by Mr. Klehs. No vote taken.

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Mr. Parrish made a substitute motion to submit the petition for decision. The motion was seconded by Mr. Chiang and duly carried, Mr. Parrish, Mr. Chiang and Mr. Klehs voting yes, Mr. Andal voting no, Ms. Mandel not participating in accordance with Government Code Section 7.9.

CORPORATE FRANCHISE AND INCOME TAXES HEARINGS

Daniel W. and Pamela A. Bullock, 92497

1995, \$11,567.00 Assessment, \$2,891.75 Penalty, Delinquent

1996, \$11,022.33 Assessment, \$2,755.58 Penalty, Delinquent

1996, \$ 1,302.00 Assessment, \$ 325.50 Penalty, Delinquent

For Appellant: No Appearance

For Franchise Tax Board: Kathleen Cooke, Tax Counsel

Action: The Board took no action.

Robert and Robin Bender, 75792

1993, \$47,963.00 Assessment

For Appellant: Allen C. Clarke, Attorney

For Franchise Tax Board: Renel Sapiandante, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether respondent may reach its own audit determinations, despite receiving an audit report from the Internal Revenue Service allegedly in favor of appellants.

Whether appellants must recognize income from the partnerships in the year the partnerships report appellant's distributive share to the IRS, despite the fact that appellants did not receive the proceeds until the next year due to litigation between appellants and the partnerships regarding appellants' status as a partner.

Whether appellants should deduct in 1993 or in 1994 the payment of the contingency fees paid to their attorney in 1994.

Whether appellants' apparent protest of respondent's audit of 1994 serves as a claim for refund, thus allowing appellants to include 1994 in this appeal.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be deferred to the March Culver City Board meeting.

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John W. English, 87446

1990, \$ 62,708.00 Assessment

1991, \$109,173.00 Assessment

1992, \$129,971.00 Assessment

For Appellant:

James P. Kleier, Attorney

For Franchise Tax Board:

Natasha Paige, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether respondent properly attributed a portion of appellant's income to California based on the number of days appellant allegedly performed business-related duties in California, given the fact that appellant resides in Texas.

Appellant's Exhibit: Declaration (Exhibit 12.8)

Action: Mr. Klehs moved to sustain the action of the Franchise Tax Board. The motion was seconded by Mr. Andal but failed to carry, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish, Mr. Chiang and Mr. Andal voting no.

Mr. Parrish moved to submit the petition for decision. The motion was seconded by Mr. Chiang but failed to carry, Mr. Chiang and Mr. Parrish voting yes, Mr. Klehs, Mr. Andal and Ms. Mandel voting no.

Upon motion of Mr. Chiang, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Andal voting no, Mr. Parrish abstaining, the Board ordered that the action of the Franchise Tax Board be sustained.

Tayyeen and Shu-Yung Lin, 87205

1996, \$2,346.00 Assessment

For Appellant:

Tayyeen Lin

Gregory T. Hu

For Franchise Tax Board:

Carissa Lynch, Tax Counsel

Doug Powers, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellant-husband was a full-year or part-year California resident during 1996.

Appellant Exhibit: Letter (Exhibit 12.9)

Ownership Summary (Exhibit 12.10)

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

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Donald and Julia Galloway, 98A-1137; 8900246770

1192, \$90,207.00 Assessment

David L. (deceased) and Juanita F. Thomas, 31869

1992, \$96,203.00 Assessment, \$23,730.25 Penalty, Late Filing

For Appellant: No Appearance

For Franchise Tax Board: Renel Sapiandante, Tax Counsel

Action: The Board took no action.

Mark C. Dowling, 88982

1996, \$1,632.00 Assessment, \$408.00 Penalty, Late Filing

For Appellant: Mark C. Dowling

For Franchise Tax Board: Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellant had met his burden to prove error in the proposed assessment.

Whether reasonable cause for relief from the late filing penalty exists.

Appellant Exhibit: Miscellaneous Documents (Exhibit 12.11)

1996 Income Tax Return (Exhibit 12.12)

Action: Mr. Andal moved to not apply a frivolous appeals penalty. Failed for lack of a second.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the action of the Franchise Tax Board be modified.

Glen A. Blair, 115255

1997, \$2,282.00 Assessment

1998, \$2,485.00 Assessment, \$621.25 Penalty, Delinquent

\$621.25 Penalty, Notice & Demand

For Appellant: Glen A. Blair

For Franchise Tax Board: Christie Mitchell, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellant's California income is subject to California tax laws.

Whether appellant has established error in respondent's proposed tax assessments.

Whether appellant has established that the delinquent filing and notice and demand penalties should be abated.

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Whether the Board has jurisdiction to consider appellant's appeal of the "frivolous return" penalties imposed by respondent.

Whether appellant has maintained a frivolous or groundless position before the Board.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 12.13)

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision.

BUSINESS TAXES APPEALS HEARINGS

Apple Packaging & Graphics, Inc., SR AS 99-798212; 91344
4-1-96 to 3-31-99, \$1,865.25 Tax

For Petitioner: Waived Appearance

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether any of the disallowed claimed sales for resale are valid sales for resale.

Action: Upon motion of Mr. Chiang, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

FINAL ACTION ON PETITION HEARD DECEMBER 19, 2001

Mr. Andal moved to deny the petition of *All American Pipeline L.P. (465)*, SAU 01-024; 130880. The motion was seconded by Mr. Klehs but failed to carry Mr. Klehs and Mr. Andal voting yes, Mr. Chiang and Mr. Parrish voting no, Ms. Mandel not participating in accordance with Government Code section 7.9.

FINAL ACTION ON APPEALS HEARD DECEMBER 19, 2001

Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel voting no, Mr. Parrish abstaining, the Board ordered to sustain the action of the Franchise Tax Board in the appeal of *Tayyeen and Shu-Yung Lin, 87205*.

The Board deferred consideration of the appeal of *Glen A. Blair, 115255*, to the January 9, 2001 Sacramento Board Meeting.

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The Board adjourned at 5:00 p. m.

The foregoing minutes are adopted by the Board on February 6, 2002.